

**Notice of Allowability**

Application No.

10/825,629

Examiner

A R. Salimi

Applicant(s)

DIAMOND ET AL.

Art Unit

1648

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/26/06.
2. ☒ The allowed claim(s) is/are 16-22.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>19</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                              |
|   | 9. <input type="checkbox"/> Other _____.   |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with attorney Cassidy on 08/28/2006.

The application has been amended as follows:

Canceled Claims 1, 2, 4, 6-15 without prejudice or disclaimer.

Added the following new claims:

16. (New) A Modified Vaccinia Ankara Virus vaccine vector which comprises a DNA construct which comprises DNA encoding one or more human cytomegalovirus proteins selected from the group consisting of pp65, pp150, IE1, gB and antigenic fragments thereof, wherein optionally one or more of said human cytomegalovirus proteins or antigenic fragments thereof is modified by N-terminal ubiquitination, N-end modification or both, and wherein said human cytomegalovirus protein or antigenic fragment thereof optionally contains a lysine-containing adapter sequence.

17. (New) A protein encoded by the DNA construct of claim 16.

18. (New) A Modified Vaccinia Virus vaccine vector of claim 16 which comprises Ub-R-pp65, Ub-R-pp150, Ub-R-IE1(4) and gB(s).

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19. (New) A DNA construct of claim 16 which comprises DNA encoding:

- (a) ubiquitinated, N-terminal arginine, phosphokinase-deleted pp65;
- (b) ubiquitinated, N-terminal arginine pp150;
- (c) ubiquitinated, N-terminal arginine IE1 exon 4; and
- (d) transmembrane domain-deleted gB.

20. (New) A Modified Vaccinia Virus vaccine vector which comprises the DNA constructed in claim 19.

21. (Currently amended) A method of vaccinating a person in need thereof against human cytomegalovirus which comprises administering to said person an effective amount of the vaccine virus vector of claim 16.

22. (Currently amended) A method of augmenting immunity against human cytomegalovirus in a person in need thereof which comprises administering to said person an effective amount of the vaccine virus vector of claim 16.

Claims 16-22 are allowed.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. R. Salimi whose telephone number is (571) 272-0909. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The Official fax number is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. R. Salimi

08/29/2006

  
A. R. SALIMI  
PRIMARY EXAMINER